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October 27, 2015

USPO Megan A. Maier
U.S. Probation Office
William J. Green Building
600 Arch Street
Suite 2400
Philadelphia, PA 19106-1797

Re: United States v. Askia Washington, 13-171-02

Dear Ms. Maier:

I was appointed to replace Mr. Jarvis as counsel for Mr. Washington at sentencing. I have reviewed the presentence report with Mr. Washington and would like to lodge an objection to ¶ 28 of the PSR which ascribes a two-level upward adjustment pursuant to USSG § 2D1.1(b)(1) because a dangerous weapon was possessed.

At the outset Mr. Washington was acquitted of possessing a firearm during and in relation to a crime of violence and aiding and abetting in violation of 18 U.S.C. § 924 (c). While an acquittal in-and-of-itself is not dispositive of whether this particular enhancement applies, under the facts of this case, there is insufficient evidence, even at a preponderance standard, to support the enhancement.

At the outset, the circumstances surrounding the presence of the firearms in this case were testified to by Jermau Johnston. Mr. Johnston testified that he accompanied Dwight Berry to the home of Berry's mother to retrieve the firearms. NT 6-4-15 @ 222. Mr. Berry proceeded to put the firearms, and an Eggo waffle box in which the firearms were ultimately found, in the cargo area of the Ford F-150 Mr. Berry was driving. Id. @ 224-225. Mr. Washington was not present when this took place.

Mr. Johnston further testified that Mr. Berry gave him the Eggo box containing the firearms and instructed Mr. Johnston to place the Eggo box under the back seat of the minivan in which the firearms were ultimately found. NT 6-5-15 @ 7. Mr. Washington, who had driven in a separate vehicle up until the time of the take-down/arrest, was not present when Mr. Berry instructed Mr. Johnston to place the firearms under the backseat of the minivan. Nor was there any testimony that Mr. Washington had knowledge of the presence of the firearms inside of the minivan during the discussion of the robbery inside the minivan in the hotel parking lot.

Mr. Washington understands that his total offense level does not change by eliminating this enhancement. Nonetheless, he asks that you consider this objection for the sake of the accuracy of the PSR. Mr. Astolfi has no objection to the timeliness of the objection.

Very truly yours,

/s/ Mark S. Greenberg

MARK S. GREENBERG

cc: Mr. Askia Washington
AUSA Salvatore L. Astolfi